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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,425	06/12/2001	Paul J. Thompson	11576.38USC1	6175

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Attention of David G. Schmaltz
MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, MN 55402-0903

EXAMINER

MILLER, CHERYL L

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 10/30/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/879,425

Applicant(s)

THOMPSON, PAUL J.

Examiner

Cheryl Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 8-12, 19-23 and 29-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-12, 19-23, and 29-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submissions filed on April 17, 2003 and August 11, 2003 have been entered.

Election/Restrictions

Applicant's election without traverse of Group II, claims 1-3, 8-12, 19-23, and 29-39 in Paper No. 15 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 42-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 42 recites the limitation "the base material" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claims 43-44 depend upon claim 42 and inherit all problems with the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 8-9, 11-12, 19-22, 29, 31-34, and 36-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Yan (USPN 5,843,172, cited previously). Referring to claims 8 and 9, Yan discloses an intraluminal stent (12; fig.1) comprising a stent body having an un-deployed orientation and an enlarged orientation, sized to be balloon expanded (col.8, lines 1-3), the stent body having a stent axis extending between first and second ends (fig.1), the stent body also having an exterior surface (86, 112) and an interior surface (84, 110), wherein the interior surface (84, 110) includes a portion having a rough surface finish (pits 18 create a rough surface, see figures 10, 12).

Referring to claim 11, Yan discloses the portion including first and second portions of the rough surface finish disposed on opposite sides of a center of the stent body (pits, thus the rough surface is present at both ends of the interior surface, see figures 1, 10, 12).

Referring to claims 12, 21-22, and 33-34, Yan discloses first and second rough surface portions extending along the entire axial length of the body, the rough surface finish covering a majority of the interior surface of the stent body, and the rough surface finish completely surrounding an axis of the stent body (see figures 1, 10, 12).

Referring to claims 19-20 and 31-32, Yan discloses the rough surface finish including pits (18) approximately 3-20 microns in size (col.3, lines 66-67).

Referring to claims 29 and 40-44, Yan discloses the stent body having a metal base material (col.4, lines 32-38), wherein the rough surface finish includes depressions or pits (18) in the metal base material.

Referring to claims 36-39, Yan discloses the rough surface finish configured to resist an undesirable biologic response such as undue thrombus formation or platelet activation (pits may include drugs to do so, col.5, lines 1-5).

Claims 1-3, 8-12, 19, 21-23, 29-30, and 33-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al. (USPN 6,071,305). Referring to claims 8 and 9, Brown discloses an intraluminal stent (11, 111; fig.2, 18; col.7, lines 34-39) comprising a stent body (12) having an un-deployed orientation and an enlarged orientation, sized to be balloon expanded (col.5, lines 40-45), the stent body (12) having a stent axis (CL) extending between first and second ends (fig.1, 2, 18), the stent body also having an exterior surface (16) and an interior surface, wherein the interior surface includes a portion having a rough surface finish (pits 22, 20 create a rough surface finish, also Brown discloses the metal being a porous metal, creating a rough surface, col.7, lines 23-24).

Referring to claims 1, 10, and 30, Brown discloses an interior surface having a rougher surface finish than a rough surface finish on an exterior surface (fig.3 shows only pits on an interior surface, fig.8 shows more pits on an interior surface than an exterior surface, creating more roughness).

Referring to claims 2 and 11, Brown discloses the portion including first and second portions of the rough surface finish disposed on opposite sides of a center of the stent body (pits,

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thus the rough surface is present at both ends of the interior surface, see figures 1, 2, and 18, cross-sections of pits seen in figures 3 and 8 may extend the entire length of the stent or intermittently, col.5, lines 52-55).

Referring to claims 3, 12, 21-22, and 33-34, Brown discloses first and second rough surface portions extending along the entire axial length of the body, the rough surface finish covering a majority of the interior surface of the stent body, and the rough surface finish completely surrounding an axis of the stent body (see figures 1, 2, 18, 3, 8; col.5, lines 52-55).

Referring to claim 19, Brown discloses the rough surface finish including pits (22, 20, 52).

Referring to claims 23 and 35, Brown discloses a rough surface finish covering the interior surface adjacent a mid region of the stent body, wherein the interior surface adjacent the ends of the stent body are not rough (pits may be located anywhere and need not extend the entire length of the stent body, col.5, lines 52-55; col.6, lines 10-21; col.7, lines 4-10).

Referring to claims 29 and 40-44, Brown discloses the stent body having a metal base material (col.7, lines 11-19), wherein the rough surface finish includes depressions or pits (pits 20, 22, 52, or pores in the material, col.7, lines 23-24) in the metal base material.

Referring to claims 36-39, Brown discloses the rough surface finish configured to resist an undesirable biologic response such as undue thrombus formation or platelet activation (pits may include drugs to do so, col.4, lines 64-57; col.5, lines 6-11; col.7, lines 57-63).

Claims 8-9, 11-12, 19, 21-22, 29, 33-34, and 36-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Alt (USPN 6,217,607 B1). Referring to claims 8 and 9, Alt discloses an

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intraluminal stent (10, fig. 1) comprising a stent body having an un-deployed orientation and an enlarged orientation, sized to be balloon expanded (col.3, lines 5-8), the stent body having a stent axis extending between first and second ends (fig. 1), the stent body also having an exterior surface and an interior surface, wherein the interior surface includes a portion having a rough surface finish (80; fig.3; col.4, lines 1-5, 13-15, 18-22; col.7, lines 46-59).

Referring to claims 11-12, 21-22, and 33-34, Alt discloses the portion including first and second portions of the rough surface finish disposed on opposite sides of a center of the stent body (pits, thus the rough surface is present at both ends of the interior surface, see figures 1, 3). Alt discloses first and second rough surface portions extending along the entire axial length of the body, the rough surface finish covering a majority of the interior surface of the stent body, and the rough surface finish completely surrounding an axis of the stent body (fig.1, 3; col.4, lines 1-5, 13-15, 18-22; col.7, lines 45-59).

Referring to claim 19, Alt discloses the rough surface finish (80) including pits (fig.3).

Referring to claims 36-39, Alt discloses the rough surface finish configured to resist an undesirable biologic response such as undue thrombus formation or platelet activation (col.10, lines 10-14).

Referring to claims 29 and 40-44, Alt discloses a stent body having a base material having an interior and exterior surface, the interior surface having a rough surface finish including pits in the metal base material (col.9, line 64 - col.10, line 8).

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Miller whose telephone number is (703) 305-2812. The examiner can normally be reached on Monday through Friday from 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Cheryl Miller

**BRUCE SNOW
PRIMARY EXAMINER**